

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JERRY W. MOORE

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 81,333

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Bryce D. Benedict's September 25, 1998, Order. The Appeals Board heard oral argument by telephone conference on April 28, 1999. Appeals Board Member Gary Korte recused himself from these proceedings. Stacy Parkinson was appointed Appeals Board Member Pro Tem to replace Mr. Korte.

APPEARANCES

Claimant appeared pro se. Respondent, a qualified self-insured, appeared by its attorney, Jennifer L. Hoelker of Dakota City, Nebraska.

RECORD

The Appeals Board has considered the transcript of the proceedings and documents admitted into evidence at the hearing held before the Administrative Law Judge on September 24, 1998. Additionally, the Appeals Board has considered the documents and materials contained in the administrative file of the Division of Workers Compensation.

ISSUES

The claimant appealed the September 25, 1998, Order entered by the Administrative Law Judge that denied claimant's request for payment of an award of permanent partial disability benefits in the sum of \$1,034.12 as awarded by the Director and approved by the District Court of Lyon County, Kansas, on August 24, 1981. The

Administrative Law Judge also denied claimant's request for an assessment of civil penalty against the respondent in an amount of not more than \$100 per week for failure to pay the judgement when due as provided by K.S.A. 44-512a (1981 Ensley).

The claimant contends the respondent has not paid the \$1,034.12 permanent partial disability benefits awarded in 1981. At the motion hearing held before the Administrative Law Judge on September 24, 1998, copies of demand letters written by claimant dated October 7, 1981, and December 13, 1981, were admitted into evidence. Those letters made a demand on respondent's attorney of record at that time, Richmond Enochs, for payment of the \$1,034.12.

The respondent argues that claimant was actually overpaid because the District Court found the Director erred when he awarded claimant 54 weeks of temporary total disability benefits at \$120.95 per week for a total of \$6,531.30. The District Court's Journal Entry dated August 24, 1981, incorporates by reference the District Court's August 7, 1981, Memorandum Opinion that found claimant was no longer temporarily and totally disabled as of July 6, 1978, and therefore respondent overpaid claimant \$6,289.40 of temporary total disability benefits. The August 24, 1981, Journal Entry went on to find that claimant was "entitled to an award of compensation as entered by the Administrative Law Judge and the Director with the exception of the aforementioned order, that the respondent be reimbursed the sum of Six Thousand Two Hundred Eighty-nine and 40/100 Dollars (\$6,289.40) from the State Fund pursuant to the provision of K.S.A. 44-569(a)[sic]." Respondent argues a credit should be applied to the ordered permanent partial disability benefits for the \$6,289.40 it overpaid claimant in temporary total disability benefits. Accordingly, respondent contends, if such overpayment is credited, then claimant has been paid in full.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board finds the Administrative Law Judge's Order dated September 25, 1998, that denied claimant's request for an order requiring the respondent to pay a judgement for permanent partial disability benefits in the amount of \$1,034.12 and for an assessment of penalties against respondent for nonpayment of the judgement, should be affirmed.

This case involves a work-related accidental injury that occurred over twenty-one years ago on April 5, 1978. At that time, claimant was employed by the respondent and suffered a stab wound to his left forearm while boning meat.

Following a preliminary hearing held on November 20, 1978, claimant was found to be temporarily and totally disabled, and respondent was ordered to pay temporary total

disability weekly benefits commencing August 22, 1978. Thereafter, respondent filed a motion to terminate the temporary total disability benefits. The motion was heard before an examiner on August 24, 1979. In an Order dated September 4, 1979, the examiner sustained respondent's motion and temporary total disability benefits were terminated as of that date.

Following a regular hearing and the deposition testimony of Dr. David J. Edwards, Administrative Law Judge James R. Ward, in an Award dated March 16, 1981, found claimant had suffered a five percent permanent partial disability to his left arm and awarded claimant permanent partial disability benefits in the amount of \$1,269.98. The Administrative Law Judge also found that the examiner's temporary total disability benefit order and the subsequent termination order should be affirmed. But the Administrative Law Judge did not include those temporary total disability benefits in computing the award.

The respondent filed an Application for Director's Review of the Administrative Law Judge's Award. In an Order dated May 4, 1981, the Director modified the Administrative Law Judge's Award. The Director awarded claimant 54 weeks of temporary total disability benefits at the rate \$120.95 per week or \$6,531.30. He also awarded the claimant a five percent loss of use of the left arm plus a healing period for a lump sum award of \$1,034.12.

The respondent appealed the Director's Order to the District Court of Lyon County, Kansas. Before the District Court, respondent argued that claimant had reached maximum medical improvement on July 6, 1978, and therefore was no longer temporarily totally disabled after that date. Respondent asserted that it had overpaid claimant \$6,289.40 in temporary total disability benefits. Respondent requested a judgement for reimbursement from the Workers Compensation Fund in that amount as provided for in K.S.A. 1980 Supp. 44-569a.

In a Memorandum Opinion dated August 7, 1981, the District Court found that claimant had met maximum medical improvement on July 6, 1978. Accordingly, the District Court found that the respondent had made an overpayment of temporary total disability benefits to claimant in the amount of \$6,289.40. The District Court ordered the Workers Compensation Fund to reimburse the respondent for the overpayment. The Memorandum Opinion was then incorporated into a Journal Entry dated August 24, 1981, that approved all other findings of the Administrative Law Judge and Director except for the reimbursement by the Workers Compensation Fund to the respondent for the temporary total disability overpayment.

After reviewing the District Court's Memorandum Opinion and Journal Entry, the Appeals Board recognizes that claimant could be confused regarding his entitlement to the award of \$1,034.12 for permanent partial disability benefits contained in Director's May 4, 1981, Order. The issue as presented in the District Court's Memorandum Opinion was whether respondent, pursuant to K.S.A. 1980 Supp. 44-569a, should be reimbursed by the

Workers Compensation Fund for an overpayment of temporary total disability benefits paid to the claimant in the amount of \$6,289.40. The Appeals Board finds implicit in the District Court finding that there was an overpayment of temporary total disability benefits in that K.S.A. 1977 Supp. 44-525(b) required a credit be given the respondent for all amounts paid to the claimant as compensation before the date of the award. Accordingly, the Appeals Board finds, when respondent is given credit for the overpayment of temporary total disability benefits in the amount of \$6,289.40, the permanent partial disability award of \$1,034.12 has been paid in full.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's September 25, 1998, Order that denied claimant's request for payment of permanent partial disability benefits and assessment of civil penalties is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jerry W. Moore, Marked Tree, AR
Jennifer L. Hoelker, Dakota City, NE
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director